

Enhancing NPS Stewardship of State-Owned Submerged Cultural Resources

What do the Isle Royale Light Station in Michigan, the Old Harbor Lifesaving Station in Massachusetts, *SS Jeremiah O'Brien* in California, *USS Utah* in Hawaii, the B-29 Aircraft known as the *Beetle Bomb* in Nevada, the Montezuma Well in Arizona, and Fort Jefferson in Florida all have in common? Each of them is a maritime cultural resource within a unit of the national park system. The National Park Service is steward to hundreds, if not thousands, of maritime cultural resources including lighthouses, lifesaving stations, floating ships, shipwrecks, sunken aircraft, and now inundated terrestrial prehistoric and historic sites.

Through the efforts of the NPS National Maritime Initiative, established in 1987, terrestrial and floating maritime cultural resources have been identified and evaluated in at least 32 parks, including places like Cape Hatteras National Seashore in North Carolina and San Francisco Maritime National Historical Park in California. Through the efforts of the NPS Submerged Resources Center, based initially in the Southeast Archeological Center in the early 1970s and now in the Intermountain Region's Santa Fe Support Office, and numerous partners, contractors, and park staff, historic shipwrecks and other submerged cultural resources have been identified in at least 64 parks including places like Dry Tortugas National Park in Florida, Sleeping Bear Dunes National Lakeshore in Michigan, Statue of Liberty National Monument in New Jersey and New York, and *USS Arizona Memorial* in Hawaii.

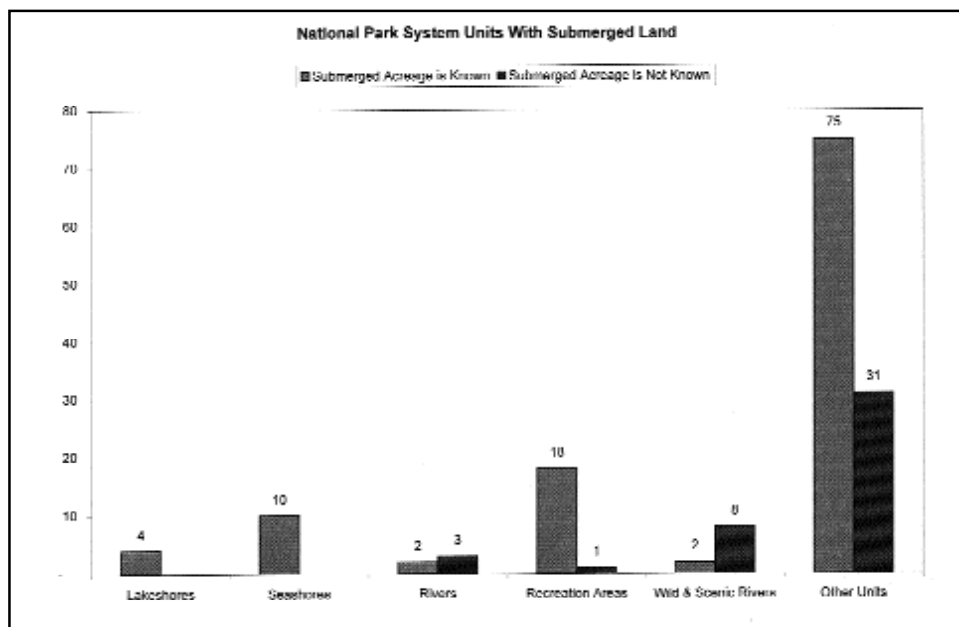
The National Park Service manages its submerged cultural resources in the same manner as it manages other cultural resources, applying the same policies and procedures for identifying, evaluating, documenting, monitoring, protecting, and interpreting resources whether they are above

ground, floating, buried, or submerged. For example, when academicians wish to study historic shipwreck sites within parks, they apply for and conduct their research under permits issued pursuant to either the Antiquities Act (16 USC 431-433) or the Archaeological Resources Protection Act (16 USC 470aa-mm). When commercial salvors wish to recover historic shipwreck sites within parks, they also apply for permission, but their applications generally are denied because the proposed work typically does not meet permit requirements.

In two instances, first in 1979 and again in 1988, two commercial salvors filed complaints in admiralty court seeking ownership of or a salvage award for salvaging historic shipwrecks, one of which was located within Biscayne National Park in Florida and the other within Canaveral National Seashore, also in Florida. In both instances and after years of litigation, the courts ruled that the National Park Service had the authority to regulate the salvage activities¹ and the bureau denied permission in both instances.

But in 1998, the National Park Service had a rude awakening. This time, at Assateague Island National Seashore in Maryland and Virginia, another commercial salvor went to court and, this time, the court ruled that the bureau did not have the authority to regulate the salvage operation.² Why was it different this time?

When Biscayne National Park was established, the state of Florida gave title to its submerged land within the park's boundary to the National Park Service. When Canaveral National Seashore was established, the state of Florida retained title to its submerged land within the park's boundary but stipulated in its dedication that the National Park Service has an obligation to manage and preserve state-owned submerged cultural resources within the park. When Assateague Island National Seashore was established, the states of Maryland and Virginia also



retained title to their submerged land within the park's boundary, but at least in Virginia, where the salvage activity was being undertaken, the state only gave the bureau responsibility for managing the water column and surface.

At this point, National Park Service officials wondered how many other national park system units are like Assateague Island as opposed to units like Biscayne or Canaveral. At the urging of the Solicitor's Office in the Department of the Interior (DOI) and with the support of the National Park Service Land Resources Division, Ranger Activities Division, and Associate Director for Cultural Resources Stewardship and Partnerships, the Archeology and Ethnography Program began to systematically collect information about submerged land and submerged cultural resources in parks. With objectives of determining which parks contain marine, lacustrine, or riverine areas and ascertaining the nature of National Park Service jurisdiction or control over those areas, the effort included:

- examining park-specific authorizing legislation, master deed lists, planning documents, archeological reports, region-wide and cluster-wide archeological survey plans, and other publications;
- querying the service-wide Resource Management Plan database and the Project Management Information System database;
- contacting land officers, chief rangers, natural resource specialists, cultural resource specialists, archeologists, and others in parks, support

offices, regional offices, centers, and headquarters; and

- cross-checking data with other data compiled separately by both the National Park Service Water Resources Division and the U.S. Geological Survey under the Marine Protected Areas program established in May 2000 under Executive Order 13158.

A great amount of data has been compiled but there are many gaps, some data for individual parks is inconsistent and, in some parks, the National Park Service and the states disagree over who the legal owner is of submerged

land. As a result, all of the data is considered to be tentative and subject to verification and any help in this effort from persons inside and outside the NPS would be greatly appreciated.³

What has the National Park Service discovered? Forty-eight park units are national lakeshores, seashores, rivers, recreation areas, and wild and scenic rivers, but an additional 106 park units also contain submerged land. The "other units" category includes island parks (e.g., Buck Island Reef National Monument in the U.S. Virgin Islands, Channel Islands National Park in California, and War in the Pacific National Historical Park in Guam), coastal parks (e.g., Cape Krusenstern National Monument in Alaska, Olympic National Park in Washington, and Voyageurs National Park in Minnesota), and parks with inland lakes and rivers (e.g., Canyonlands National Park in Utah, Valley Forge National Historical Park in Pennsylvania, and Yellowstone National Park in Wyoming).

All National Park Service administrative regions contain park units with submerged land and no single region contains a preponderance of park units with submerged land. About one-quarter of the known submerged acreage is owned either by a state or other entity (e.g., an Indian tribe, municipality, public utility, or private individual) or the owner is not known. The National Park Service owns much of the known submerged land in parks. However, at least 37 park units and as many as 84 park units may contain state submerged land and state-owned

historic shipwrecks and other submerged cultural resources located on that land. It is clear that in these cases, there are several things the NPS must do and should do including:

- consult with the states prior to undertaking activities, including research, that may affect state land and resources inside national park units;
- invite states to participate as partners in joint management of state property inside national park units; and
- determine what the nature of NPS management authority and responsibility is over state property inside national park units, particularly the ability of the NPS to protect historic shipwrecks from commercial salvage activities that the states may wittingly or unwittingly permit.

In 1988, the Abandoned Shipwreck Act (43 USC 2101-2106) was enacted, giving the states title to most abandoned shipwrecks within their respective waters. When the statute was enacted, the U.S. Congress recognized that there would be instances where state-owned historic shipwrecks would be located within the boundaries of units of the national park system, and that state laws may differ from federal laws governing management, preservation, and protection of historic property. Because of possible inconsistencies in those laws, and to ensure that all historic shipwrecks in national park units would be preserved and protected, in the legislative history to the statute,⁴ the U.S. Congress directed the National

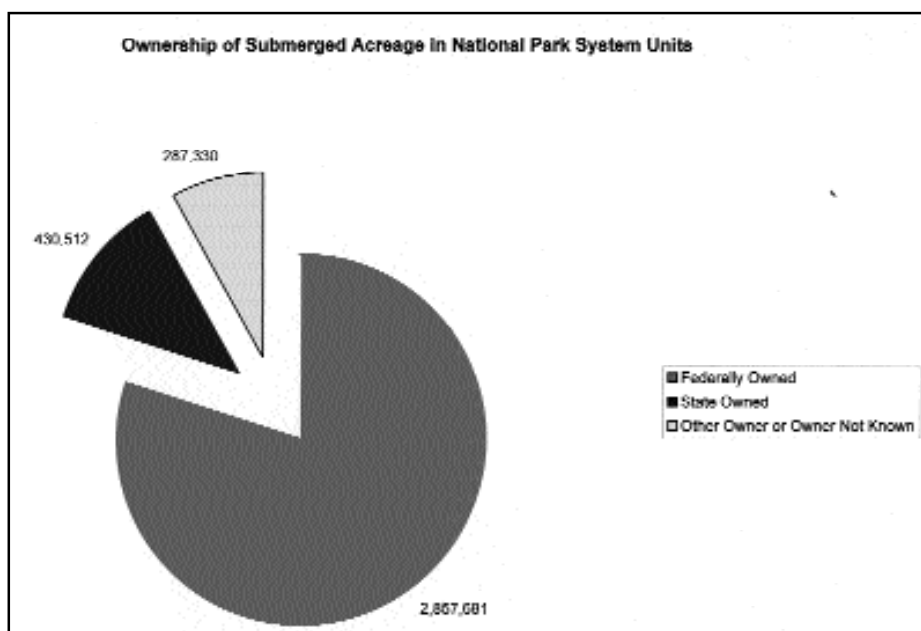
Park Service to enter into management agreements with the respective states.

To date, only three parks⁵ have entered into general management agreements with states while two other parks⁶ have entered into project specific agreements with states. The National Park Service has made informal inquiries to the National Conference of State Historic Preservation Officers, the National Association of State Archaeologists, and several individual state underwater archeologists, and a number of states⁷ have indicated interest in entering into management agreements with the NPS. In consultation with the Department of the Interior Solicitor's Office, the Archeology and Ethnography Program has drafted a model agreement that parks, regions, and states may use as a starting point in discussions.⁸

It is suggested that the state governor sign agreements on behalf of the state to ensure that all state agencies that have responsibility for submerged resources are subject to the agreements. The signatory for the state is important because more often than not there are several state agencies involved including, for example, the state submerged lands commission, the state marine resources commission, the state park system, the state museum, the state historic preservation office, the state underwater archeology office, and the state underwater advisory commission. When there are state-owned submerged lands and historic shipwrecks in two or more parks within a state, as an alternative to individual agreements

for each park, it is suggested that the National Park Service enter into a statewide agreement, signed by the regional director and state governor, that would cover all applicable national park units in the respective state.

National Park Service staff in parks and other offices are encouraged to look at the situation in their respective park or region's parks. When there are state submerged lands and state-owned historic shipwrecks or other submerged cultural resources, or the possibility of such resources existing, within a national park unit, park staff are encouraged to start a dialogue with officials in their respective



regional office and regional Department of the Interior Solicitor's Office, and the appropriate state officials. Between 10% and 20% of national park units contain state-owned submerged land and historic shipwrecks. Working cooperatively in partnership with the states, the National Park Service will be better able to manage these important public resources in accordance with its stated policies.

Notes

- ¹ *Klein v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 758 F.2d 1511 (11th Cir. 1985); *Lathrop v. Unidentified, Wrecked & Abandoned Vessel*, 817 F.Supp. 953 (M.D. Fla. 1993).
- ² *Sea Hunt, Inc. v. Unidentified, Shipwrecked Vessel or Vessels*, 22 F.Supp. 2d 521 (E.D. Va. 1998).
- ³ Contact the author via email at <michele_c_aubry@nps.gov> or by telephone at 202-343-1879 for details on information compiled to date and for updating information about submerged lands and submerged cultural resources in units of the national park system.

- ⁴ *Senate Report No. 100-241* (Comm. on Energy and Natural Resources), p. 6, and *House of Representatives Report No. 100-514*, Pt. 1 (Comm. on Interior and Insular Affairs), p. 4, and Pt. 2 (Comm. on Merchant Marine and Fisheries), pp. 8-9, on Public Law 100-298.
- ⁵ Apostle Islands National Lakeshore in Wisconsin, Kalaupapa National Historical Park in Hawaii, and Redwood National Park in California.
- ⁶ Assateague Island National Seashore in Maryland and Virginia, and Point Reyes National Seashore in California.
- ⁷ This includes Alaska, California, Florida, Maryland, Massachusetts, Minnesota, and Virginia.
- ⁸ A copy of the draft model agreement and other technical assistance can be obtained by contacting the author.

Michele C. Aubry is a senior archeologist in the Archeology and Ethnography Program, National Center for Cultural Resources, National Park Service, Washington, DC, and the author of the National Park Service Abandoned Shipwreck Act Guidelines.

Apostle Islands National Lakeshore in Lake Superior contains about 25,000 acres of submerged land and more than 100 submerged cultural resources, all under the jurisdiction of the State of Wisconsin. In 1995, the superintendent of the Lakeshore and the director of the State Historical Society of Wisconsin entered into a Memorandum of Understanding under which the two agencies jointly manage and protect the submerged cultural resources and bottomlands within and adjacent to the Lakeshore. The photograph shows one of the Lakeshore's historic shipwrecks being measured to produce an archeological site map. Photo courtesy the Submerged Resources Center, National Park Service.

